

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/1/09

UNITED STATES OF AMERICA,

-v.-

SAMUEL ISRAEL III,

Defendant.

: FINAL ORDER OF FORFEITURE
: AS TO THE HSBC ACCOUNT,
: NICHOLS STANDARD CHARTERED
: ACCOUNT, AND TOYOTA FJ CRUISER

: 05 Cr. 1039 (CM)

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WHEREAS, on September 29, 2005, the defendant SAMUEL ISRAEL III (the "defendant") was charged in Information 05 Cr. 1039 (the "Information") with conspiracy to commit investment adviser fraud and mail fraud, in violation of 18 U.S.C. § 371 (Count One); investment adviser fraud, in violation 15 U.S.C. §§ 80b-6 and 80b-17 (Count Two); and mail fraud, in violation of 18 U.S.C. § 1341 (Count Three);

WHEREAS, the Information included a forfeiture allegation charging that the defendant shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses set forth in Counts One and Three of the Information, to wit, a sum of money equal to \$450 million, representing the amount of proceeds obtained as a result of the conspiracy and mail fraud offenses alleged in this Information, for which the defendant and his co-conspirators are jointly and severally liable, with said sum including, but not limited to, all right, title and interest

of the defendant in the following, and all property traceable thereto:

a. Approximately \$100,010,673.68 on deposit at Bank of America in the name of the Arizona State Treasurer and referenced as SW 2005-001633;

b. All right, title and interest of the defendant in any entities or partnerships, including but not limited to, IM Partners and IMG LLC, and any and all assets, including bank accounts, held by or for the benefit of such entities or partnerships; and

c. Any and all interests in any bank accounts and/or brokerage accounts held by or for the benefit of the defendant;

WHEREAS, on September 29, 2005, the defendant pleaded guilty to the three-count Information;

WHEREAS, in a letter pursuant to the suggestion of the Court in United States v. Pimentel, 932 F.2d 1029, 1034 (2d Cir. 1991), the Government advised that (i) with respect to the offenses charged in Counts One and Three, criminal forfeiture of all property constituting or derived from proceeds traceable to the commission of the offenses is mandatory pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461; (ii) at present, the Government believes that this is an amount not less than \$450,000,000; and (iii) the specific property subject to forfeiture, as property constituting or derived from proceeds traceable to the commission of the offenses, includes, but is not limited to, the following:

a. Approximately \$100,010,673.68 on deposit at Bank of America in the name of the Arizona State

Treasurer and referenced as SW 2005-001633 (the "Arizona Seized Funds");

b. All right, title and interest of the defendant in any entities or partnerships, including but not limited to, IM Partners and IMG LLC, and any and all assets, including bank accounts, held by or for the benefit of such entities or partnerships; and

c. Any and all interests in any bank accounts and/or brokerage accounts held by or for the benefit of the defendant,

(the "Specific Property Listed in the Information");

WHEREAS, the defendant consents to the forfeiture of all of his right, title and interest in the Specific Property Listed in the Information as property constituting proceeds traceable to the offenses set forth in Counts One and Three of the Information, and property traceable to such property;

WHEREAS, on August 3, 2007, the Court signed the Third Preliminary Order as to the Specific Property, an order forfeiting Israel's interest in certain listed property as property constituting proceeds traceable to the offenses for which Israel pled guilty, and property traceable to such property, including the following specific property (without prejudice to the Government's seeking an amended preliminary order which specifies all of the forfeitable specific assets included in the Information and plea agreement):

\$1 million transferred into account
#40051557409731, in the name of "Robert
B. and Ellen M. Nichols" at HSBC Bank PLC
(the "HSBC Account") in England;

a copy of which is attached hereto as Exhibit A and incorporated herein by reference as if set out in full;

WHEREAS, on April 14, 2008, the defendant was sentenced to, among other things, a forfeiture money judgment in the amount of \$300,000,000.00 and forfeiture of the specific property listed in the Information;

WHEREAS, on April 18, 2008, an Order of Restitution was entered against the defendant in the amount of \$300,000,000.00;

WHEREAS, on or about April 29, 2008, a Petition for Adjudication of Interest pursuant to 21 U.S.C. § 853(n) was filed by Robert B. Nichols and Ellen M. Nichols (the "Claimants"), asserting their interest in the HSBC Account;

WHEREAS, on December 5, 2008, the Court signed the Preliminary Order of Forfeiture as to Prescott Valley Property, an order forfeiting Israel's interest in the following property:

all right, title and interest in the property known as 9750 East Windmill Acres Road, Prescott Valley, Arizona, which Yavapai County Assessor parcel identification number 103-01-114-4 and 103-01-114E-9, up to \$2.5 million ("Prescott Valley Property"),

a copy of which is attached hereto as Exhibit B and incorporated herein by reference as if set out in full;

WHEREAS, on or about February 10, 2009, the Court entered a Preliminary Order of Forfeiture as to the Nichols

Standard Chartered Account Funds and a Toyota FJ Cruiser, an order forfeiting Israel's interest in the following property:

- a. All funds in account # [REDACTED] 786-2, in the name of "Mr. Nichols, Robert Booth &/or Mrs. Nichols, Ellen Marie Hopko" at Standard Chartered Bank in Singapore up to \$1,999,994.19 (the "Nichols Standard Chartered Account Funds"), and
- B. a 2007 Toyota FJ Cruiser with Vehicle Identification Number JTEBU11F470016536 (the "Toyota FJ Cruiser"),

a copy of which is attached hereto as Exhibit C and incorporated herein by reference as if set out in full;

WHEREAS, the provisions of 21 U.S.C. § 853(n)(1), require publication of notice of forfeiture and of the Government's intent to dispose of the specific property before the United States can have clear title to the specific property;

WHEREAS, on August 17, 2007, a copy of the Third Preliminary Order of Forfeiture was sent by certified mail to Lawrence S. Bader, Esq., as counsel to the defendant, at the Law Offices of Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer P.C., 565 Fifth Avenue, New York, NY 10017 and Andrew Bruce Bowman, Esq., as counsel for Daniel E. Marino, at the Law Offices of Andrew B. Bowman, 1804 Post Road East, Westport, CT 06880;

WHEREAS, on January 13, 2009, notice of the Preliminary Order of Forfeiture as to the Prescott Valley Property was sent by certified mail to Lawrence S. Bader, Esq., as counsel to the defendant, at the Law Offices of Morvillo,

Abramowitz, Grand, Iason, Anello & Bohrer P.C., 565 Fifth Avenue, New York, NY 10017; to Martin Simone, Esq., as counsel for Robert B. Nichols and Ellen Nichols, at Simone & Rossi, 3530 Wilshire Blvd, Los Angeles, CA 90010; to J. Joseph Bainton, Esq., as counsel to Robert B. Nichols and Ellen Nichols, at Smith, Gambrell & Russell, 26 Broadway, New York, NY 10004-1840; and to Jonathan D. Perry, Esq., at Dechert LLP, 1095 Avenue of the Americas, New York, NY 10036, attached with the above referenced notice letters and certified mail receipts as Exhibit D;

WHEREAS, on or about February 10, 2009, the following individuals received an electronic notification upon the filing of the Preliminary Order as to the Nichols Chartered Bank Account Funds and a Toyota FJ Cruiser, Barbara Lauren Tencher, Barry A. Bohrer, Carole Neville, Elise Scherr Frejka, Gary John Mennitt, J. Joseph Bainton, Jonathan D. Perry, Joseph W. Allen, Lawrence S. Bader, and M. William Munno;

WHEREAS, on May 4, 2009, a Stipulation and Order of Settlement was filed between the United States and the claimants, whereby the death of claimant Robert B. Nichols was noted, the claims of Robert B. Nichols were extinguished, and Ellen M. Nichols agreed to forfeit the following assets to the United States:

- (i) All funds in the HSBC Account;
- (ii) the Nichols Standard Chartered Account Funds;

(iii) the Toyota FJ Cruiser; and

(iv) to pay \$500,000 to the United States by June 30, 2009;

WHEREAS, notice of the Third Preliminary Order of Forfeiture was duly published in the U.S.A. Today and in the International Herald Tribune, once in each of three successive weeks beginning on November 5, 2007, and proof of such publications was filed with the clerk of the Court on May 28, 2009;

WHEREAS, beginning on March 19, 2009 and for thirty consecutive days thereafter, pursuant to Rule G(4)(a) of the Supplemental Rules for Certain Admiralty and Maritime Claims and Asset Forfeiture Actions, the United States posted notice of the Preliminary Order of Forfeiture as to the Nichols Standard Chartered Account Funds and the Toyota FJ Cruiser on www.forfeiture.gov, the government internet site, and proof of publication was filed with the Clerk of the Court on May 28, 2009, a copy of which is attached hereto, along with the above referenced proof of publication, as Exhibit E;

WHEREAS, as set forth in Rule G(4)(a)(ii) and Rule G(5)(a)(ii), the notice of forfeiture specified the subject property and the intent of the United States to forfeit and dispose of the subject property, thereby notifying all third parties of their right to file a petition to adjudicate the validity of their alleged legal interest in the subject property,

within sixty days from the first day of publication of the notice on the official government internet web site;

WHEREAS, no other claims or answers have been filed or made in this action, no additional parties have appeared to contest the action to date, and the statutory time periods, as set forth in Rule G(5)(a)(ii), have expired for doing so;

NOW, THEREFORE, on the application of LEV L. DASSIN, Acting United States Attorney for the Southern District of New York, by Jeff Alberts, Assistant United States Attorney, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The following specific property is hereby forfeited to the United States for disposition in accordance with the law, subject to the provisions of 21 U.S.C. § 853(n), and shall be applied to the outstanding Money Judgment, in partial satisfaction, thereof:

- a. \$1 million transferred into account #40051557409731, in the name of "Robert B. and Ellen M. Nichols" at HSBC Bank PLC in England;
- b. All funds in account # [REDACTED] 786-2, in the name of "Mr. Nichols, Robert Booth &/or Mrs. Nichols, Ellen Marie Hopko" at Standard Chartered Bank in Singapore up to \$1,999,994.19; and
- c. a 2007 Toyota FJ Cruiser with Vehicle Identification Number JTEBU11F470016536;

2. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, upon entry of this Order of Forfeiture the United States Attorney's Office is authorized to conduct any

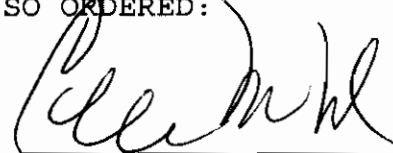
discovery needed to identify, locate or dispose of the property, including depositions, interrogatories, requests for production of documents and to issue subpoenas, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

3. The Clerk of the Court shall forward four certified copies of this order to Assistant U.S. Attorney Jeff Alberts, One St. Andrew's Plaza, New York, New York, 10007.

Dated: New York, New York
May , 2009

June 1

SO ORDERED:



HONORABLE COLLEEN McMAHON
UNITED STATES DISTRICT JUDGE

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